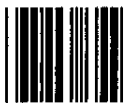


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CRTRLMEM.

ORIGINAL

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FILED

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CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

6 Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

9	UNITED STATES OF AMERICA,)	Criminal Case No. 99cr3465-JM-01
10)	
	Plaintiff,)	
11)	DATE: June 13, 2000
	v.)	TIME: 9:00 a.m.
12)	
	ALFONSO ZAPIEN-CARRILLO (1),)	GOVERNMENT'S TRIAL MEMORANDUM
13)	
	Defendant.)	
14)	
15)	

16 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and
 17 through its counsel, Gregory A. Vega, United States Attorney, and
 18 Roopal R. Shah, Assistant United States Attorney, and hereby files the
 19 attached trial memorandum.

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I

STATEMENT OF THE CASE

A. INDICTMENT

On December 7, 1999, the Grand Jury returned a fourteen-count indictment against six defendants including Defendant Alfonso Zapien-Carrillo (hereinafter "Defendant" or "Zapien"). That indictment alleges a conspiracy to bring in, transport, and harbor illegal aliens as well as specific individual instances of bringing in illegal aliens for financial gain, transporting, and harboring illegal aliens.

B. TRIAL STATUS

A jury trial for Defendant Zapien is set for Tuesday, June 13, 2000 at 9:00 a.m. before the Honorable Jeffrey T. Miller. The Government expects the trial to last approximately 3-4 days.

C. CUSTODY

Defendant is out on bond pending trial.

D. INTERPRETER

The Defendant will require a Spanish interpreter for trial. Three Government witnesses are Spanish-speaking, and will also require an interpreter for trial.

E. DEFENSE COUNSEL

Robert Carriedo, Esquire, represents the Defendant.

F. PRETRIAL MOTIONS

On May 22, 2000, the Government filed motions in limine to admit expert testimony, to admit statements of alienage, and to prohibit reference to punishment. To date, Defendant has not filed any motions in limine. The motions in limine hearing is June 5, 2000, at 2 p.m.

II

STATEMENT OF FACTS

This is a case about an alien smuggling organization which has two known bases in San Diego: an administrative house at 3104 Ocean View Boulevard, San Diego, California ("Ocean View house") and a load house at 506 East Division Street, National City, California ("Division house"). This organization operates from the Hotel Guadiana in Tijuana, Mexico. From there, undocumented aliens are either smuggled across the border at the Port of Entry or sheperded through the hills in East San Diego County. The smugglers take the undocumented aliens to the Division house until they can be delivered to their sponsors for the smuggling fee. Defendant is one of the leaders of the organization. Defendant's role is primarily behind the scenes - Defendant works with the undocumented aliens in Mexico to facilitate their crossing into the United States; Defendant also helps to coordinate the transportation of the undocumented aliens once they have crossed into the United States.

There are several dates of activity that are noteworthy to the conspiracy and Defendant's role in it.

A. October 15, 1999

On October 15, 1999, agents followed a green 1987 Isuzu Trooper, California license plate 4ECF127 ("green Trooper") and a silver Lincoln sedan, California license plate 1RKY865 ("silver Lincoln") as they drove in tandem from the Ocean View house toward the Live Oaks Spring area in East San Diego County. At approximately 11:10 a.m., Agents observed the green Trooper and silver Lincoln leave the Live Oaks Spring area and drive back west

1 on Interstate 8. The green Trooper appeared heavily laden and was
2 visibly lower than previously observed. Agents followed the
3 vehicles as they exited onto Kitchen Creek road and traveled
4 northbound. At approximately 1:30 p.m., the green Trooper arrived
5 at the Division house. Agents watched a Hispanic male exit the
6 East Division drop house from the side entrance and open the side
7 gate. That individual provided direction as approximately 10 to 11
8 people exited the green Trooper and walked single file, in a
9 hurried manner, into the Division house. Several of the occupants
10 were carrying small travel bags or backpacks. The appearance and
11 mannerisms of these individuals are consistent with that of illegal
12 aliens who are being smuggled into the United States.

13 On the same date, at approximately 10:35 AM, Agents observed
14 a blue and white 1979 Ford Chateau van, California license plate
15 5T00361 ("blue and white van") arrive at the Division house.
16 Agents watched a Hispanic male exit the East Division drop house
17 from the side entrance and open the side gate. That individual
18 provided direction as approximately 26-27 people exited the blue
19 and white Ford van in a single file line, and walked into the
20 Division house in a hurried manner and hunched over as if
21 attempting to conceal themselves. Several of the occupants were
22 carrying small travel bags or backpacks. The appearance and
23 mannerisms of these individuals are consistent with that of illegal
24 aliens who are being smuggled into the United States.

25 B. October 21, 1999

26 On October 21, 1999, while stationary at the intersection of
27 Old Highway 80 and Buckman Springs Road in a fully marked service
28 vehicle, Border Patrol agents observed the green Trooper

1 (California license plate 4ECF127) stop twenty feet short of the
2 stop sign; the green Trooper moved forward a few feet and stopped
3 again. The green Trooper came to a complete stop at the stop sign
4 and remained there for several minutes as if the driver was
5 unwilling to pass the Border Patrol unit. Finally the vehicle
6 turned westbound on Old Highway 80. Agents noticed that although
7 only two occupants were visible, the vehicle bounced and swayed as
8 if it were hauling a heavy load; the vehicle also had difficulty
9 staying on the road around the bends. Agent Cotsworth performed a
10 record check on the vehicle and discovered that the license plate
11 "4ECF127" belonged to a 1986 Jaguar. Agents stopped the vehicle
12 and discovered 5 persons attempting to conceal themselves in the
13 back of the vehicle. Agents questioned all 7 individuals regarding
14 their citizenship and legal status in the United States. All of
15 them admitted to being undocumented aliens with no legal documents
16 to enter the United States.

17 C. November 17, 1999

18 On November 17, 1999, at approximately 8:30 a.m. Agents
19 observed a blue Pathfinder California license plates 4GWC305 at the
20 Ocean View house. Shortly thereafter, Agents observed the
21 Pathfinder depart from the Ocean View house and travel eastbound on
22 Interstate 8 in tandem with a red Geo Storm. At 9:45 a.m., Agents
23 observed the blue Pathfinder arrive at the side gate of the
24 Division house. Agents observed 8-9 suspected undocumented aliens
25 exit the Nissan Pathfinder and enter the Division house. At
26 approximately 11:10 a.m., agents observed a white sports utility
27 vehicle drop off approximately 6-8 more suspected undocumented
28 aliens at the Division house.

1 At approximately 12:45 p.m., Agents observed co-defendants
2 Martin Martinez and Vinicio Zago-Berra transport two undocumented
3 aliens, Jose Guadalupe Alonso Morales and Maria Aydee Cantu, from
4 the Division house to an apartment complex on Winona Avenue in San
5 Diego, California. At that location, Martin Martinez and Vinicio
6 Zago-Berra collected \$1600 in exchange for delivering Jose
7 Guadalupe Alonso Morales and Maria Aydee Cantu. Agents arrested
8 all four people. The two undocumented aliens stated that they made
9 arrangements with the Defendant to be smuggled into the United
10 States. Their sponsor, Jose Luis Alonso Morales, indicated that
11 immediately preceding the delivery of his relatives, Jose
12 Guadalupe Alonso Morales and Maria Aydee Cantu, he received a call
13 from a woman at phone # 619-339-3559 asking for his address and
14 whether he had the money ready for his relatives.

15 Both Jose Guadalupe Alonso Morales and Maria Aydee Cantu
16 picked Defendant out a of photo line-up and identified him as "El
17 Chivero," the person at the Hotel Guadiana who spoke to them about
18 the manner of crossing into the United States and payment.

19 Also on November 17, 1999, agents executed search warrants at
20 both the Ocean View and the Division houses. On that date, at the
21 Division house, agents discovered 13 undocumented aliens at the
22 Division house, a business card for the Hotel Guadiana, and alien
23 smuggling ledgers. At the Ocean View house, agents found titles
24 for numerous vehicles, cash payment receipts for utility bills, and
25 alien smuggling ledgers. Agents arrested 4 individuals on alien
26 smuggling charges, and 13 undocumented aliens for being in the
27 United States without proper documentation.

28 Several days later, pursuant to an arrest warrant, agents

1 arrested Defendant at an apartment complex located at 2204 Euclid
2 Avenue, San Diego, California. In Defendant's belongings at the
3 time of his arrest were identification cards, a number of business
4 cards with phone numbers written on the back, a receipt from
5 Daniel's Jewelers, and a pay-stub from Patrick David's Catering in
6 Danville, California. Also in the Defendant's belongings was a
7 Sprint PCS cellular phone [619-254-0175]. That cell phone was used
8 to call the Ocean View house, the Division house and the Hotel
9 Guadiana.

10 III

11 WITNESSES

12 The Government anticipates calling the following witnesses
13 in its case-in-chief. The Government may call additional witnesses
14 if trial testimony makes it necessary.

- 15 1. George Gale, United States Border Patrol
- 16 2. Brian Manaher, United States Border Patrol
- 17 3. Robert Senior, United States Border Patrol
- 18 4. Juan Estrada, Special Agent, United States Border Patrol
- 19 5. Robert Rodgers, United States Border Patrol
- 20 6. Adrian Cotsworth, United States Border Patrol
- 21 7. Frank Scharff, United States Border Patrol
- 22 8. Victor Cardenas, United States Border Patrol
- 23 9. Custodian of Records - Pacific Bell Telephone
- 24 10. Custodian of Records - Daniel's Jewelers
- 25 11. Patrick David
- 26 12. Marta A. Palanco
- 27 13. Saul Synder
- 28 14. Jose Guadalupe Alonso Morales

15. Jose Luis Alonso Morales
16. Maria Aydee Cantu Regalado
17. Martha Rodriguez Paz
18. Immigration Inspector David Vasquez

IV

EXHIBITS

An exhibit list will be provided on the day of trial.

V

PERTINENT LAW

A. TITLE 8, UNITED STATES CODE, § 1324(a)(1)(A)(v)(I)

The elements for conspiracy to bring in, transport, and harbor illegal aliens are as follows:

1. First, beginning on a date unknown and ending on or about November 17, 1999, there was an agreement between two or more persons to commit at least one crime as charged in the indictment;
2. Second, the Defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it;
3. Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of the jurors agreeing on a particular overt act that was committed.

B. TITLE 8, UNITED STATES CODE, § 1324(a)(2)(B)(ii)

The elements for bringing in illegal aliens for financial gain as charged in Counts 3, 5, 7, 9, 12 are as follows:

1. First, the person specified in the count was an alien;
2. Second, the person specified in the count had not received prior official authorization to come to, enter, or reside in the United States;
3. Third, Defendant knew [or was in reckless disregard of the fact] that the person specified in the count had not received prior official authorization to come to, enter, or reside in the United States;

1 4. Defendant knowingly brought the person specified in
2 the count into the United States for the purpose of
 commercial advantage and private financial gain.

3 5. Defendant acted with intent to violate the United
4 States immigration laws. United States v. Barajas,
 183 F.3d 947(9th Cir. 1999).

5 C. TITLE 8, UNITED STATES CODE, § 1324(a)(1)(A)(ii)

6 The elements of transporting illegal aliens as charged in
7 Counts 4, 6, 8, 10, and 13 are:

8 1. First, the person specified in the count was an
 alien;

9 2. Second, the person specified in the count was not
10 lawfully in the United States;

11 3. Third, Defendant knew that the person specified in
 the count was not lawfully in the United States; and

12 4. Defendant knowingly transported or moved the person
13 specified in the count in order to help them remain
 in the United States illegally.

14 D. TITLE 8, UNITED STATES CODE, § 1324(a)(1)(A)(iii)

15 The elements of harboring illegal aliens as charged in Counts
16 2, 11, and 14 are:

17 1. First, the person specified in the count was an
 alien;

18 2. Second, the person specified in the count had come
19 to, entered, or remained in the United States in
 violation of law;

20 3. Third, Defendant knew that the person specified in
21 the count had come to, entered, or remained in the
 United States in violation of law; and

22 4. Fourth, Defendant knowingly concealed, harbored, or
23 shielded from detection the person specified in the
 count or attempted to conceal, harbor, or shield from
24 detection such persons.

25 VI

26 STIPULATIONS

27 The parties may stipulate to the authenticity of the phone
28 records subpoenaed from Pacific Bell/Sprint PCS for three phone

1 numbers, and to the subscriber information for each phone number.

2 VII

3 ANTICIPATED LEGAL ISSUES

4 **A. Defendant's Prior Arrest for Alien Smuggling Should be**
5 **Admitted as 404(b) Evidence**

6 Defendant's prior arrest on June 13, 1997 with 29 undocumented
7 aliens at 506 E. Division should be admitted as Rule 404(b) evidence
8 to show knowledge, intent, and absence of mistake.

9 Rule 404(b) of the Federal Rules of Evidence permits evidence
10 of other acts to show, among other things, knowledge, intent,
11 preparation, and lack of mistake. Rule 404(b) is a "rule of
12 inclusion," and evidence of other acts is admissible "except where it
13 tends to prove only criminal disposition." United States v. Ayers,
14 924 F.2d 1468, 1472-73 (9th Cir. 1991) (emphasis in the original). The
15 test for admissibility under Rule 404(b) consists of the following
16 four parts: (1) it must be based upon sufficient evidence; (2) it must
17 not be too remote in time from the charged crimes; (3) it must bear
18 some similarity to the charged crimes; and (4) it must prove an
19 essential element of the charged offense. United States v. Melvin,
20 91 F.3d 1218, 1222 (9th Cir. 1996).

21 Defendant's June 1997 arrest for alien smuggling meets all four
22 parts of the Melvin test.

23 First, the Government expects to call the Border Patrol Agents
24 who arrested Defendant on June 13, 1997 to testify as to Defendant's
25 presence at the Division house and his attempt to flee upon seeing
26 agents. These events occurred in June 1997, a little over two years
27 before the investigation in the instant case commenced.

28 The factual similarities establish a common modus operandi, and

1 help refute a mistake defense and/or any claims that Defendant lacked
2 knowledge or intent.

3 The evidence tends to prove intent and knowledge of the use of
4 the Division house to harbor undocumented aliens, an element of the
5 harboring and conspiracy offenses with which Defendant is charged;
6 furthermore, this evidence refutes any possible claim by the Defendant
7 that he is unaware of the activities that transpired at the Division
8 house. For these reasons, Defendant's June 13, 1997 arrest should be
9 admitted as 404(b) evidence.

10 **B. Summary Analysis of Phone Records Should be Admitted**

11 Pursuant to Federal Rules of Evidence 1006, the United States
12 intends to introduce a chart summarizing phone tolls on Defendant's
13 Sprint PCS cellular phone, on co-conspirator Silvestre Rivera's Sprint
14 PCS cellular phone, and on the Ocean View house phone. See United
15 States v. Meyers, 847 F.2d 1408, 1412(9th Cir. 1988) (upholding
16 admission of exhibit summarizing record of long distance phone calls
17 of various co-conspirators).

18 Rule 1006 states:

19 The contents of voluminous writings, recordings, or photographs
20 which cannot conveniently be examined in court may be presented
21 in the form of a chart, summary, or calculation. The
22 originals, or duplicates, shall be made available for
examination or copying, or both, by other parties at reasonable
time and place. The court may order that they be produced in
court.

23 Fed. R. Evid. 1006 (2000).

24 In the instant case, the United States intends to introduce
25 hundreds of pages of phone records relevant to the case. The
26 underlying phone records are admissible but too voluminous to be
27 "conveniently examined in court." For this reason, the United States
28 also intends to introduce a chart showing that during the period of

1 May 23, 1999 and November 23, 1999, Defendant's Sprint PCS telephone
2 [619-254-0175] received a total of 21 incoming calls and 1388 outgoing
3 calls. 276 calls were made from that telephone to the Ocean View
4 house [619-233-5339]. 98 calls were made to the Division house [619-
5 477-6403] . 50 calls were made to the Hotel Guadiana in Tijuana,
6 Mexico [011-52-66-88-33-48].

7 During that same period, the Ocean View phone [619-233-5339]
8 recorded 182 incoming calls and 1823 outgoing calls. 264 calls were
9 made to the Hotel Guadiana in Tijuana, Mexico [011-52-66-88-33-48];
10 220 calls were made to the Ocean View phone voicemail system; 16 calls
11 were made to the Division house [619-477-6403]; 9 calls were made to
12 Defendant's Sprint PCS telephone [619-254-0175].

13 During the period of July 30, 1999 to November 12, 1999, records
14 for Silvestre Rivera's PCS telephone [619-368-5945] indicate that
15 there were a total of zero (0) incoming calls and 1431 outgoing calls.
16 377 calls were made to the Division house [619-477-6403], and 329
17 calls were made to Ocean View house [619-233-5339].

18 In conclusion, because of the voluminous nature of these phone
19 records, a chart summarizing such records should be admitted into
20 evidence.

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VIII.

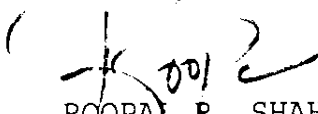
JURY INSTRUCTIONS

The Government will file proposed jury instructions separately.
The Government reserves the right to submit additional instructions
at the Rule 30 conference.

DATED: May 30, 2000.

Respectfully submitted,

GREGORY A. VEGA
United States Attorney


ROOPAL R. SHAH
Assistant U.S. Attorney

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 99cr3465-JM
Plaintiff,)
v.)
ALFONSO ZAPIEN-CARRILLO,) CERTIFICATE OF
Defendant.) SERVICE BY U.S. MAIL

IT IS HEREBY CERTIFIED THAT:

I, Tammy M. McFadden, am a citizen of the United States over the age of eighteen years and a resident of San Diego County, California; my business address is 880 Front Street, San Diego, California 92101-8893. I am not a party to the above-entitled action; and subsequent to filing with the Clerk of the Court, I have deposited in the United States mail at San Diego, California, a copy of the following: **Government's Trial Memorandum** address to:

ROBERT CARRIEDO, ESQ.
105 "W" F. STREET, STE. 203
SAN DIEGO, CA 92101-6036

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th day of June, 2000.


TAMMY M. MCFADDEN